

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

MELVIN WAYNE ORR

Plaintiff,

V.

MS. JENAN BRAY, ET AL.

Defendants.

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CASE NO. 4:15cv381

Judge Mazzant/Magistrate Judge Craven

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On October 28, 2016, the Magistrate Judge issued a Report and Recommendation, recommending Defendants Volunteers of America, Jeanan Bray, Greg Basham, and Lisa Chandler's 12(b)(1) Motion to Dismiss (Doc. No. 51) be granted and that Plaintiff's case be dismissed without prejudice. Plaintiff Melvin Wayne Orr, proceeding pro se ("Plaintiff"), filed objections to the Report and Recommendation, and Defendants filed a response to the objections. The Court conducts a *de novo* review of the Magistrate Judge's findings and conclusions.

BACKGROUND

Plaintiff alleges he was wrongfully evicted from a halfway house operated by the Volunteers of America ("VOA"). Plaintiff seeks \$30,000 in damages. Plaintiff originally sued the VOA and its employees Jeanan Bray, Greg Brasham, and Lisa Chandler (collectively "Defendants"), as well as two probation officer employed with the U.S. Bureau of Prisons (the "BOP"). On May 2, 2016, the Court adopted the March 15, 2016 Report and Recommendation of the Magistrate Judge and

dismissed Plaintiff's claims against the probation officers for lack of subject matter jurisdiction.

REPORT AND RECOMMENDATION

On August 23, 2016, Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), asserting Plaintiff has not established complete diversity exists between the parties or the amount in controversy exceeds \$75,000. According to Defendants, Plaintiff is a citizen of the State of Texas; the VOA is a Texas corporation with its principal place of business in Texas; VOA employees Bray, Brasham and Chandler are all citizens of Texas; and Plaintiff specifically seeks damages in the amount of \$30,000. Defendants further assert Plaintiff is alleging a state law claim for wrongful eviction.

OBJECTIONS

Plaintiff filed objections to the Report and Recommendation. Rather than address the substance of the Report and Recommendation, Plaintiff claims the parties settled this lawsuit during a conference call with the Magistrate Judge on July 13, 2016. According to Plaintiff, during the conference call, Defendants' counsel offered Plaintiff \$30,000 to settle the case; Plaintiff accepted the offer and was asked to bring all documentation to Defendants' counsel; Plaintiff attempted to contact counsel for two weeks to follow up on the agreement; and counsel failed to respond, instead filing a "defective Motion to Dismiss." (Doc. No. 63 at pg. 2). Plaintiff asserts Defendants should be estopped from obtaining a dismissal based on their bad faith.

DE NOVO REVIEW

As pointed out by Defendants in their response to Plaintiff's objections, the Court's minutes of the conference call establish that Defendants did not offer to settle the lawsuit. According to the minutes, the Magistrate Judge discussed mediation with the parties, and it was noted Plaintiff had

made a settlement demand. However, it was also noted that Defendants were planning on filing a motion to dismiss, and they specifically requested the motion to dismiss be resolved before any mediation was scheduled. The Court finds unpersuasive Plaintiff's assertion that Defendants acted in bad faith or "employed deceptive practices," or that their motion to dismiss is based upon unsupported jurisdictional grounds. (Doc. No. 63 at pg. 2).

Plaintiff does not specifically object to any of the Magistrate Judge's findings and conclusions. Importantly, Plaintiff does not address the fact the Magistrate Judge recommended the Court dismiss Plaintiff's case without prejudice, as alternatively requested by Plaintiff in his response to the motion to dismiss (in the event the Court finds Defendants' motion meritorious).

The Court has carefully reviewed the relevant briefing, the Report and Recommendation, the objections, and the response to the objections and is of the opinion the findings and conclusions of the Magistrate Judge are correct. The Court adopts the Magistrate Judge's report as the findings and conclusions of the Court. It is therefore

ORDERED that Defendants Volunteers of America, Jeanan Bray, Greg Basham, and Lisa Chandler's 12(b)(1) Motion to Dismiss (Doc. No. 51) is hereby **GRANTED**. It is further

ORDERED that Plaintiff's above-entitled and numbered cause of action is **DISMISSED WITHOUT PREJUDICE**.

SIGNED this 15th day of November, 2016.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE